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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 1613

AIR TRANSPORT LODGE 1894 OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Petitioners,

against

WILLIAM TURNER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

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Statement of the Case

William Turner, a member of petitioner labor unions, while running for the position of Shop Steward, distributed to his fellow members two leaflets (Pet. for Cert., A 80a, 81a; 37a- 41a), in which he discussed union problems, advised fellow members that he was a member of the Pro-

gressive Labor Party, and stated his political ideas, which he characterized as "communist" ones (A 38a, 40a).*

A provision of petitioner IAM's constitution, Art. L, § 3, prohibited, *inter alia,* ". . . advocating or encouraging communism, fascism, nazism, or any other totalitarian philosophy or by other actions giving support to these 'philosophies' or 'isms' . . . ." (A 15a, 25a). Turner's opponents, on the basis of his leaflets, filed disciplinary charges against him, charging him with violating that provision "by advocating Communist ideas and incorporating these ideas with his campaign for Shop Steward" (A 90a). On those charges he was brought before a union trial committee and expelled from membership for "advocating Communist ideas" (A 93a).

Turner exhausted all appellate remedies available to him within the labor organization before commencing this action to have his expulsion, and the union constitutional provision on which it was based, declared void.

The district court granted summary judgment for Turner (A 14a-17a), reinstating Turner to membership and declaring the quoted union constitutional provision void. (The district court's Opinion is at A 23a-41a.) The Court of Appeals for the Second Circuit affirmed (A 2a-13a). The defendant unions have petitioned for certiorari.

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* An example of the "communist" ideas expressed in Turner's leaflets is as follows (A 40a, 81a):

"ARE MY COMMUNIST IDEAS, 'ANTI-AMERICAN'? No, my communist ideas don't put me on the side of Russia, or China, or Cuba! The working-class in the so-called 'socialist' countries have very little to say. These countries have a capitalist system just like in the United States. The only difference is that in those countries, all the wealth and production-machinery is owned by the government, which is controlled by a ruling-class of high-living 'party' leaders, military leaders, and highly-skilled technicians. Here, in the U.S., the financial industrialist dictatorship over the country is a little more hidden."

ARGUMENT

I

The petitioners have not shown any substantial reason for granting review.

In their statement of "Reasons Writ Should Be Granted" (Pet. for Cert., pp. 8-14), the petitioner unions are unable to show that any question has been decided by the Court below in conflict with any decision of any other Court of Appeals, or in conflict with any applicable decision of this Court, or that there has been any departure from the usual course of judicial proceedings.

Petitioners are therefore reduced to contending that the Court of Appeals has decided some important issue that has not been but should be settled by this Court.

In order to present an important issue, petitioners argue that a labor union—or, rather, the entrenched officials of a labor union—ought to be permitted to expel members who advocate philosophies or political ideas that the officials dislike. Or, more specifically, that they ought to be permitted to expel Turner from membership in the union for "advocating Communist ideas."

Petitioners have been unable to show any provision of the Labor-Management Reporting and Disclosure Act of 1959 (or "LMRDA"), 29 U.S.C. §§ 401, et seq., which would support their contention, and have been unable to cite a single case decided under the LMRDA, in the twenty years that the latter has been in effect, to support their contention.

Quite simply, the petitioners' contention is without merit. It runs counter to the plain language of Sections 101(a)(2) and 609 of the LMRDA, 29 U.S.C. §§ 411(a)(2) and 529,

and it runs counter to the Congressional policy underlying the LMRDA.*

It follows that petitioners have failed to raise a substantial question for review. Their petition for certiorari should, accordingly, be denied.

II

Turner's expression of views and opinions is protected by Section 101(a)(2) of the L.M.R.D.A.

Congress, in Section 101(a)(2) of the LMRDA, 29 U.S.C. § 101(a)(2), guaranteed to "[e]very member of any labor organization" the rights to meet and assemble freely with other members and "to express any views, arguments or opinions," subject only to the organization's reasonable rules for the conduct of meetings, to the responsibility of each member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

And Congress explicitly declared *void* any union constitutional provision purporting to forbid or limit the expression of ideas, and any disciplinary punishment of a member because of such expression. §§ 101(b), 609 of the LMRDA, 29 U.S.C. §§ 411(b), 529.

In enacting the LMRDA, Congress recognized that, in order to eliminate corruption and other abuses in labor management relations, "it was imperative that all union members be guaranteed at least 'minimum standards of democratic process. . . .'" Congress therefore designed Title I of the LMRDA—the "Bill of Rights of Members of Labor Organizations"—to promote the "full and active

* Points II and III of this brief will show that the position advanced by petitioners is contrary to the sections of the LMRDA cited above, and to the Congressional purpose underlying the LMRDA.

participation by the rank and file in the affairs of the union." The rights enumerated in Title I were deemed "vital to the independence of the membership and the effective and fair operation of the union as the representative of its membership." *Hall* v. *Cole,* 412 U.S. 1, 7, 8, 93 S.Ct. 1943, 1947, 36 L.Ed.2d 702, 709 (1973). And see: *American Federation of Musicians* v. *Wittstein,* 379 U.S. 171, 182-183, 85 S.Ct. 300, 13 L.Ed.2d 214 (1964); *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492, 497, 88 S.Ct. 1743, 1747, 20 L.Ed.2d 763, 769 (1969). To achieve these ends, Congress sought, in Senator McClellan's words, to "give union members their inherent constitutional rights and . . . [to] make those rights apply to union membership as well as to other affairs of life." By protecting the union members in those rights, Senator McClellan added, "we will be giving them the tools they can use themselves." II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959.

Congress deliberately placed no limit on the range, or kind, of ideas that union members were guaranteed freedom to express. Section 101(a)(2) unequivocally guarantees to *every* member of any labor organization the right to express *any* views, arguments or opinions. The fact that, in this case, Turner chose to label his ideas "communist" ones does not affect his right, guaranteed by Section 101(a)(2), to express them. As this Court remarked in *Kingsley International Pictures Corp.* v. *Regents of the Univ. of New York,* 360 U.S. 684, 698, 79 S.Ct. 1362, 1365, 3 L.Ed.2d 1512, 1516 (1959),

> "[The Constitution's] guarantee is not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. And in the realm of ideas it protects expression which is eloquent no less than that which is unconvincing.

> "Advocacy of conduct proscribed by law is not, as Mr. Justice Brandeis long ago pointed out, 'a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy could be immediately acted on' Whitney v. California, 274 U.S. 357, at 376 (concurring opinion). 'Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of law, not abridgment of the rights of free speech. . . .' Id., 274 U.S. at 378."

The free speech guarantee of Section 101(a)(2) is no less broad than the similar guarantee of the First Amendment, at issue in *Kingsley, supra. See: Salzhandler* v. *Caputo,* 316 F.2d 445, 450 (2d Cir. 1963), *cert. den.* 375 U.S. 946 (1963); *International Ass'n of Machinists* v. *Nix,* 415 F.2d 212 (5th Cir. 1969); *Cole* v. *Hall,* 339 F.2d 881 (2d Cir. 1964) and *Ibid.,* 461 F.2d 777 (2nd Cir. 1977), *affirmed, Hall* v. *Cole, supra.*

Quite plainly, that portion of the union's constitutional provision which forbids "advocating or encouraging communism, fascism, nazism or any other totalitarian philosophy" and forbids "giving support to these 'philosophies' or 'isms'" is inconsistent with the free speech guarantee of Section 101(a)(2) and therefore, pursuant to Section 101(b), void.* Equally plainly, the expulsion of Turner violates Section 609 and is likewise void. The statutory scheme is clear, simple and explicit. No one need be in doubt as to what it means.

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* Petitioners argue (Pet. for Cert., p. 12) that Art. L, § 3 of IAM's constitution was "upheld" in *Int'l Ass'n of Machinists* v. *Friedman,* 102 App.D.C. 181, 252 F.2d 846 (D.C.Cir. 1958). That case, however, dealt with a different clause in Art. L. § 3, prohibiting dual unionism. And more to the point: it was decided in 1958, before the LMRDA was enacted. Thus it did not address any of the issues relevant here.

III.

The right to belong to a political organization is included within the right to express views, arguments and opinions.

The petitioner unions argue that this case does not really involve freedom of speech, since Turner was and is a member of a political organization, the Progressive Labor Party (or "PLP"), which styles itself "communist" (with a lower-case "c") and speaks in Marxist rhetoric.* Thus, say petitioners, Turner has no rights that entrenched union officials are bound to respect. Petitioners' position is without merit.

It is fundamental that the freedom to associate for the purpose of expressing one's ideas—specifically, the freedom to belong to an organization that advocates ideas—is part of, and included within, the freedom of speech. That freedom includes the right to be a member of a political organization such as PLP. *Cf. Healy* v. *James,* 408 U.S. 169, 181, 92 S.Ct. 2338, 2346, 33 L.Ed.2d 266, 279 (1972); *Keyishian* v. *Board of Regents,* 385 U.S. 589, 607, 87 S.Ct. 675, 686, 17 L.Ed.2d 629, 643 (1967); *Baird* v. *Arizona,* 401 U.S. 1, 6-7, 91 S.Ct. 702, 706, 27 L.Ed.2d 639, 646-647 (1971); *NAACP* v. *Button,* 371 U.S. 415, 431, 83 S.Ct. 328, 337, 9 L.Ed.2d 405, 417 (1963); *Louisiana ex rel. Gremillion*

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* It was not charged against Turner that membership in PLP was in any way wrongful or in violation of the union's constitutional provisions, nor was that given as a reason for his expulsion. Both the charges (A 90a) and the letter of expulsion (A 93a) assert that Turner violated Article L "by advocating Communist ideas."

However, it now appears to be petitioners' position (Pet. for Cert., p. 13) that the failure to charge and expel Turner for membership in PLP was an oversight on the part of "co-workers who are not legal draftsmen familiar with the subleties of the law." Therefore, petitioners suggest, the oversight should be overlooked, despite the statutory requirement that an accused member be served with "written specific charges"; § 101(a)(5)(A) of the LMRDA, 29 U.S.C. § 411(a)(5)(A).

v. *NAACP,* 366 U.S. 293, 296, 81 S.Ct. 1333, 1335, 6 L.Ed.2d 301, 304 (1961); *Bates* v. *Little Rock,* 361 U.S. 516, 523, 80 S.Ct. 412, 416, 4 L.Ed.2d 480, 485 (1960); *NAACP* v. *Alabama ex rel. Patterson,* 357 U.S. 449, 462, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488, 1499-1500 (1958). And see: *United Mine Workers* v. *Illinois State Bar Ass'n,* 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed2d 426, 430 (1967); *Brotherhood of Railroad Trainmen* v. *Virginia,* 377 U.S. 1, 5, 84 S.Ct. 1113, 12 L.Ed.2d 89, 93 (1964). As this Court commented in *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250, 251, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311, 1325 (1957) (plurality opinion),

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. . . . History has amply proved the virtue of political activity by minority, dissident groups. . . . The absence of such voices would be a symptom of grave illness in our society."

Petitioners base their petition for certiorari, however, upon the position that freedom of speech and freedom to associate ought not to extend to union members who belong to organizations that advocate socialist or communist ideas. Petitioners would thus exclude from the range of free discussion among union members a substantial portion of the world's heritage of social and political ideas.

The reasoning by which petitioners seek to support that position begins with the premise that, because the Communist Party is or once was considered by many to be dangerous, its members who are also members of labor unions should be denied freedom of speech within their unions. That premise, of itself, runs counter to the plain language of Section 101(a)(2)—as well as to the principles

of the Bill of Rights of our Constitution. Compare: *Keyishian* v. *Board of Regents, supra,* 385 U.S. at 606-607, 87 S.Ct. at 685-686, 17 L.Ed.2d at 642-643; *United States* v. *Brown,* 381 U.S. 437, 455-456, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965); *Elfbrandt* v. *Russell,* 384 U.S. 11, 17, 86 S.Ct. 1328, 16 L.Ed.2d 321 (1966). Petitioners then add to it a corollary to the effect that "groups similiar [*sic*] to the Communist Party" (Pet. for Cert., p. 11) should be "subject to the same principles of law as the Communist Party" (Pet. for Cert., p. 12), by which they mean that members of such "groups" should likewise be denied freedom of speech. And so the spiral of unfreedom expands. Petitioners' reasoning process is all too familiar.

What are "groups similiar to the Communist Party"? Why, say petitioners, all groups that advocate socialist or communist ideas! Thus the spiral of unfreedom extends even to members of the venerable Socialist Labor Party, which petitioners indifferently confuse with the Socialist Workers Party, ignoring the great ideational and historical differences between them. And, of course, in petitioners' view, it extends to PLP. For PLP, openly, advocates the ideas of communism.

Petitioners' argument, though purportedly anti-totalitarian, adopts the familiar logic of totalitarianism. Its premise—the asserted propriety of denying freedom of speech to Communist Party members—illustrates the germ of totalitarian reasoning in itself. But one further step in petitioner's use of that logic requires brief comment: namely, petitioners' contention that PLP and other parties that advocate the ideas of socialism or communism are "similiar" to the Communist Party.

The Communist Party is not a party of ideas. It is a *de facto* agency of the Soviet dictatorship. Its "line," which for it takes the place of ideas, changes whenever Soviet foreign policy changes. It is substantially directed,

dominated and controlled by the Soviet dictatorship, and exists to serve the interests of that dictatorship. *Cf. Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, 36-54, 57-61, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961). The Communist Party thus has nothing in common with any organization that advocates the ideas of communism or socialism.

By contrast, the PLP—as Turner's leaflets amply demonstrate—is a party of ideas. It is not an agency of any government. As Turner's leaflet makes clear (A 40a, 81a), it is not beholden to or enamoured of any dictatorship; nor is it dominated or directed or controlled by any dictatorship. Instead, PLP advocates the ideas, and ideals, of communism—and thereby debunks the propaganda of every totalitarian, "Communist" dictatorship.

A party of ideas is in *no* way "similar" to a party that takes orders from a totalitarian dictatorship. Yet by semantic jugglery, petitioners would equate the two. Petitioners' reasoning points up the danger of denying freedom to anyone or to any opinion, lest by verbal trickery the denial be extended to everyone and every opinion.

The fundamental fault of petitioners' position, therefore, lies in its premise: in the proposition that freedom of speech can safely be denied to some persons or to some opinions. Congress saw the danger of such a premise and rejected it. In Section 101(a)(2), Congress declared that *every* member of any labor organization shall have the right to express *any* views, arguments or opinions. Congress' purpose is clear: no member of any labor organization shall be expelled or otherwise disciplined by the labor organization or any officer thereof for expressing *any* view, argument or opinion, or for belonging to *any* political organization.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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